IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

State of Rajasthan & Ors. vs. Surendra Singh

(S.B.C.Writ Petition No.2748/02)

Dated:- 6th October,2006.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Rameshwar Dave, Dy.Government Advocate for the petitioner.
Mr. R.S.Saluja, Advocate for the respondents.

The petitioner State of Rajasthan in this writ petition has challenged the award dated 23.3.2001 passed by the Labour Court, Bikaner. A reference was made to learned Labour Court by appropriate government on the question whether raising of dispute by the respondent-workman Shri Surendra Singh after ten years was justified and further whether termination of his service by the management by order dated 16.1.1984 was legal and justified and if not what

relief workman was entitled to.

The case set up by the respondent-workman before the Labour Court was that he was appointed as Beldar on daily wage basis against a clear cut vacant and permanent post on 1st December, 1981. He served under Junior Engineer Shri Harjeet Singh upto 30th June, 1983 and thereafter under Junior Engineer Shri L.P.Garg from 1.7.1983 to 31.10.1983 and thereafter under yet another Junior Engineer Shri Tilakraj Ahuja from 1.11.1983 to 31.12.1983 and then again under said Shri Harjeet Singh from 1.1.1984 to 16.1.1984. Without assigning any reasons, the Executive Engineer by verbal order on 16.1.1984 removed him from service. His case was that he had completed 240 days in a calendar year immediately preceding the date of his removal and that the management did not assign any reason nor did it serve any notice prior to his removal. Many of his juniors were retained in service when he was removed and the management did not publish any seniority list at the time of his removal. He submitted various representations to the management to press his demand for

re-instatement in service. In the meantime, his mother fell sick. The workman being youngest son was engaged in looking after his ailing mother and arrangement for her treatment. In this process period of five years passed and finally his mother expired which disturbed his mental state and therefore he had to remain under treatment for sometime. He thereafter got married and finally, after he settled in his life, he applied to the Conciliation Officer for his re-instatement and hence the reference was made.

The management contested the claim of the respondent-workman. It was contended that the respondent was engaged on daily rate basis on 1.12.1981. He was not appointed on regular basis and did not work continuously nor has he given the details of the period of his working. Now they could not procure the records in view of the enormous delay in raising the dispute. However on verification of the available records, they found that only part of the details of working given by the respondent is correct. It was asserted that the respondent-workman did not work for continuous 240 days in a

calendar year preceding the date of his retrenchment on 16.1.1984. In fact, it was stated that the respondent was not removed from service but he himself abandoned the service. There was thus no requirement to comply the provisions of Section 25-F of the Industrial Disputes Act, 1947(for short "the Act of 1947"). It was stated that the reason for abandonment of the service was that he had secured better employment elsewhere and this was proved from the fact that he filed the writ petition enormously delayed. It was therefore prayed that the claim petition of the respondent may be rejected.

The Labour Court in so far as non-compliance of Section 25-F of the Act was concerned held such provision to have been violated. With regard to the first part of the reference as to whether the raising of dispute after enormous delay of ten years was justified the learned Labour Court while relying on the judgment of the Hon'ble Supreme Court in Ajaiab Singh vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr. reported in 1999 S.C.C.(L&S) p.1054 held that if the workman has offered a satisfactory

explanation, the relief may not be completely denied but can be moulded. Accordingly, the Labour Court did not accept the plea of the management that it was a case of abandonment of service but rather accepted the case of the workman that he was removed from service without complying with the provisions of Sections 25-F, 25-G and 25-H as also Rules 77 and 78 of the Industrial Dispute Act(Central) Rules. While directing his re-instatement with continuity in service, denied back wages to the workman but granted a lump sum of Rs.2500/- as compensation for the mental agony he had to face all these years.

I have heard Mr.Rameshwar Dave, learned Dy.Government Advocate for the State and Mr.R.S.Saluja, for the respondent and perused the record.

Mr.Rameshwar Dave argued that even though the alleged termination of the respondent no. 1 took place on 16.1.1984, he raised the dispute a decade threreafter. This enormous delay speaks volume about the lethargy and

negligence on his part, who did not wake up from the long slumber for 11 years and did not take any action for raising his grievance. This completely dis-entitled him to claim any relief. According to him, learned Labour Court ought to have rejected the claim of the workman on the first part of the reference made to it as the workman failed to given any satisfactory explanation of the delay of more than ten years in raising the dispute. Bald assertion made by the workman that he was busy in taking care of his ailing mother about five years and thereafter he himself was mentally disturbed and had undergone treatment for another five years without any proof on either of the facts, did not satisfactorily prove the correctness and bona fides of the explanation. The workman has stated in his affidavit that he visited the office of the management several times during first 18 months to press his demand for reinstatement in service. In the meantime, his mother fell ill. He being the youngest in the family, entire burden of taking care of his mother fell on him. Finally, his mother expired. He due to this shock could not take any steps for redressal of his grievance. Thereafter, according to the last

wish of his mother, his marriage was solemenized for which reason also some delay was caused in raising his grievance. Mr. Rameshwar Dave has made pointed reference to the cross-examination of the workman wherein he stated that he was removed from service by verbal order dated 16.1.1984 and thereafter his mother expired in the year 1985 but he could not exactly state the date of her death. According to Mr. Rameshwar Dave, averments made in the statement of the claim were not at all proved from the affidavit especially from the admission made by the workman in his cross-examination. The Labour Court therefore committed an error in passing the award. He also argued that due to delay in raising the dispute most of the records which mainly consisted in muster rolls, cash books etc. could not be located and the management was prejudiced in contesting the matter before the Labour Court. In support of his argument, Mr.Rameshwar Dave relied upon the judgments of the Hon'ble Supreme Court given in Nedungadi Bank Ltd. Vs. K.P.Madhavankutty & Ors., reported in (2000)2 SCC p.455, U.P.State Road Transport Corporation vs. Babu Ram, reported in (2006) 5 SCC p.433, Sudamdih

Colliery of Bharat Coking Coal Ltd. vs. Workman represented by Rashtriya Colliery Mazdoor Sangh, reported in (2006) 2 S.C.C. p.329, Divisional Forest Officer vs. Raghuvar and Anr., reported in 2002(1) W.L.C.(Raj.) p.501 and Krishna vs. The Secretary Labour & Anr., reported in 2003(4) SCT p.913.

In Municipal Corporation , Faridabad vs. Siri Niwas, reported in (2004) 8 S.C.C. p.195 it was held that burden of proof was on the workman to show that he had worked continuously for 240 days in the preceding date prior to his alleged retrenchment and that adverse inference could not be drawn against the management for non producing muster rolls. It was held in that case that High Court erred in drawing such inference against the management. In the present case, according to learned Deputy Government Advocate most of the records were not traceable and it was difficult to trace them because of the delay. Burden of proof squarely fell on the respondent workman to prove that he had worked for 240 days. The reference ought to have been answered in negative. Alternatively Mr.Rameshwar Dave also argued that the learned

Labour Court ought not to have directed re-instatement of the workman because the dispute was raised by him in regard to the alleged retrenchment made on 16.1.1984 very much delayed in 1995 and the reference was enormously delayed by more than 14 years which was ultimately referred by the appropriate government on 21.1.1998 and the award was passed still delayed on 23rd March, 2001. If at all the action of the management is held to be violative of Section 25-F of the Act, the lump sum amount which has already awarded to the tune of Rs.2500/- was the only appropriate relief in the circumstances of the case. He has therefore prayed that the award passed by the Labour Court may be dismissed.

On the other hand, Mr.R.S.Saluja, learned counsel for the respondent-workman argued that the discretion exercised by learned Labour Court in moulding the relief in peculiar facts of the present case was based on sound principles of law enunciated by their Lordships of the Hon'ble Supreme Court in Ajaiab Singh vs.Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr.

(supra). The relief for reinstatement with continuity has rightly been granted by the Labour Court although it has denied the relief of back wages by moulding such relief on the said principles. Mr.R.S.Saluja further argued that the respondent-workman was for first few months took rounds of the office of the management and was made to run from pillar to post and post to pillar on assurances given by the officers. It was thereafter that his mother fell ill and continued to remain ill for 4-5 years. Then she ultimately expired. The petitioner came under a mental shock and remained mentally disturbed and had to undergo psychiatric treatment. This consumed merely five years and thereafter when he became normal his marriage was solemnized which again delayed the matter for sometime and finally he approached the conciliation officer through Labour union. In these circumstances, the workman had satisfactorily explained the reasons for delay. He argued that the records and the documents were in exclusive possession of the management and in spite of several opportunities, they failed to produce any evidence to prove to the contrary and therefore, the learned Labour Court was

perfectly justified in accepting the case of the respondent-workman with regard to non-compliance of Sections 25-F, 25-H and 25-G of the Act of 1947. Mr.R.S.Saluja also relied on the judgment of the Hon'ble Supreme Court in NICKS India Tools vs. Ram Surat & Anr., reported in 2004 S.C.C.(L&S) p.1081 wherein their Lordships held that if the management set up a plea that the workman voluntarily left service, the burden of proof fall on the management to prove such plea. Mr.R.S.Saluja also relied on a yet another judgment of the Hon'ble Supreme Court in Executive Engineer vs. Suresh Chandra Sharma, reported in 2006 S.C.C. (L&S) p.878 wherein their Lordships held that when conclusion of Labour Court cannot be said to be based on no evidence. The High Court would not be justified in making interference with such award on sufficiency of the evidence. He also relied on the judgment of the Hon'ble Supreme Court in Sahahji vs. Executive Engineer, P.W.D. Reported in 2006 S.C.C.(L&S) p.644 wherein their Lordships held that even if there is delay if the Labour Court comes to the conclusion that termination was illegal, it can suitably mould the relief to be granted to the workman.

Lastly, Mr.R.S.Saluja also relied on the judgment of the Hon'ble Supreme Court in S.N.Nilajkar & Ors. vs. Telecom District Manager, Karnataka, reported in 2003 S.C.C.(L&S) p.380 wherein their Lordships held that though no limitation is prescribed for reference of a dispute but it should be referred to as soon as possible after it was raised and conciliation failed. He therefore argued that the present writ petition may be dismissed.

I have considered the arguments raised by both the learned counsel and perused the record.

In the present case, the explanation for delay offered by the respondent-workman hardly sounds convincing. All that the workman has asserted in his affidavit before the learned Labour Court that he was taking rounds of the office of the management for about 18 months after his retrenchment but he was not re-instated. In the meantime, his mother became sick and her condition deteriorated. He being the youngest and dearest son, entire responsibility fell upon his

shoulders. Ultimately his mother died and he could not come out of the shock. According to last wish of his mother, his marriage was solemnized which also delayed the matters for sometime. This affidavit clearly proves the explanation given by the workman in the statement of claim where it has been stated that he had to devote almost a period of five years in looking after his ailing mother. In fact, when the workman was subjected to cross-examine, he stated that he was removed by from service by a verbal order on 16.1.1984. His mother died in the year 1985 although he could not give exact date of her death. This clearly shows that death of his mother had taken place about a year or so after the date of his retrenchment. This also proves that he did not make a correct statement in the statement of claim or at least that statement has not been proved when he stated that he had to devote about five years in the care of his ailing mother. At the same time however I cannot accept the argument of Mr.Rameshwar Dave that delay in the matter prejudiced their defence because they could not produce the relevant records and therefore adverse inferences were drawn against him. It would be evident from para 4 of

the statement of claim that respondent-workman had given month wise details of his working with the management and in reply to the claim of the management, it was admitted that many of those assertions with respect to month wise details. If these are counted backward from the month of January, 1984 till December, 1984 on the basis of admissions made by the management in their reply to the claim, the admitted period of working of the respondent-workman comes to 271 days. Arguments of management being prejudiced on account of delay and that the burden of proof lay on the workman to prove his working for 240 days are only misconceived in the facts of the present case. What is however to be seen is whether the learned Labour Court has correctly applied the law laid down by the Hon'ble Supreme Court in Ajaiab Singh vs.Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr.(supra) which has been later reiterated in certain subsequent other judgments that in the event of delay in raising the dispute, the relief granted to the workman should be suitably moulded. In the impugned award principles in my view has not been been correctly applied by the learned

Labour Court. The learned Labour Court has completely mis-applied those principles when directed that the respondent-workman should be re-instated in service although without back wages. There was also no justification for awarding a sum of Rs.2500/- as compensation due to mental agony suffered by the workman. The award of such compensation and the reason for awarding such compensation are both foreign to the labour laws.

The point which has to be considered as to what should be appropriate relief to be granted to the respondent-workman in the present case. The retrenchment in the present case was made as far as back as on 16.1.1984. More than 22 years have elapsed since then now. The appropriate government itself made the reference on the question of retirement of the workman made on 16.1.1984 with an inordinate delay of 14 years on 21.1.1998. The respondent-workman himself raised the dispute before the Welfare and Conciliation Officer inordinately delayed in the year 1995. In the circumstances of the present case therefore it would not be

appropriate now to require the management to reinstate the respondent-workman.

In the circumstances, the directions of the learned Labour Court in the impugned award for reinstatement of the respondent is set aside and further direction awarding a sum of Rs.2500/- as compensation due to mental agony is also set aside. In view of the fact however that the retrenchment of the respondent-workman has been held to be in violation of Section 25-F of the Act of 1947, the respondent is held entitled to a lump sum compensation for a sum of Rs.50,000/- in lieu of reinstatement.

The writ petition is thus partly allowed in terms of the aforesaid directions with no order as to costs.

(MOHAMMAD RAFIQ),J.